

REMARKS

This application has been reviewed in light of the Office Action dated May 6, 2002. Claims 41-52 are now presented for examination, and Claims 45-52 have been added to provide Applicant with a more complete scope of protection. Claims 41, 45, and 49 are in independent form. Favorable consideration is requested.

Paragraph 1 of the Office Action requires the submission of corrected formal drawings. Attached hereto is a Letter Transmitting Corrected Drawings and the required formal drawings, in compliance of the requirement. Acknowledgment of the receipt and entry of those formal drawings is respectfully requested.

Claims 41-44 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,309,691 (Hasegawa), the parent of the present application, in view of U.S. Patent No. 5,879,855 (Schadeli et al.).

Initially, the Office Action states with respect to the Amendment filed on March 11, 2002 that “Applicant’s arguments that ‘691 does not teach the claimed steps in [sic] unconvincing because no particular reasons are given for the allegation.” However, the reasons why Applicant believes that Claims 41-44 are patentable over the art relied on by the Examiner in the Office Action of December 10, 2001 were set forth explicitly at pages 6-9 of the March 11, 2002 Amendment. In any event, while Applicant disagrees with the above-quoted assertion in the outstanding Office Action, Applicant now offers the

following comments in traversal of the double patenting rejection set forth in the presently outstanding Office Action.

The outstanding Office Action states that “[t]he nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy . . . so as to prevent the unjustified or improper timewise extension of the ‘right to exclude’ granted by a patent . . . .” However, since both Hasegawa and any patent that issues from the present application will expire on the same date (given that they each have a same earliest effective U.S. filing date), it is not seen how there can be any improper time-wise extension. Accordingly, if the Examiner repeats such rejection, he is respectfully requested to explain in detail how such improper time-wise extension would arise.

Also, the Office Action states that the double patenting rejection is based at least in part on Schadeli et al., but does provide any explanation whatsoever as to how that reference has been applied against the claims.

For all these reasons, it is believed that the double patenting rejection is improper, and should be withdrawn.<sup>1</sup>

All of the pending claims are believed allowable.

This Amendment After Final Rejection is believed clearly to place this application in condition for allowance and its entry is therefore believed proper under 37

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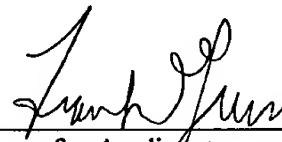
1/ In any event, without conceding the propriety of the double patenting rejection, Applicant presently intends to file a Terminal Disclaimer with respect to Hasegawa shortly. Accordingly, if the Examiner takes this case up for action before receiving that paper, he is respectfully requested to contact Applicant’s undersigned representative.

C.F.R. § 1.116. In any event, however, entry of this Amendment After Final Rejection, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, he is respectfully requested to contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
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